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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

John E. Logan

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April 16, 1999

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
TW-A325  
Washington, DC 20554

RE: Submission of Comments  
CC Docket 92-237  
NSD File No. 98-151

Dear Ms. Salas:

Enclosed are Comments submitted pursuant to the Public Notice in the above matter. The appropriate number of copies is enclosed.

Very truly yours,

  
John E. Logan

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**APR 16 1999**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of  
Request of  
Lockheed Martin Corporation and  
Warburg, Pincus & Co. for Review of the  
Transfer of the Lockheed Martin Communications  
Industry Services Business from Lockheed  
Martin Corporation to an Affiliate of  
Warburg, Pincus & Co.

CC Docket 92-237  
NSD File No. 98-151

**COMMENTS OF MITRETEK SYSTEMS  
IN RESPONSE TO PUBLIC NOTICE DA 99-347  
(RELEASED: FEBRUARY 17, 1999)**

Mitretek Systems submits this response to the Public Notice released by the Common Carrier Bureau requesting comment on Lockheed Martin Corporation's (Lockheed Martin) proposed divestiture of its responsibilities as the North American Numbering Plan Administrator (NANPA) to the CIS Acquisition Corporation (CISAC). The comments of the Commission's advisory committee, the North American Numbering Council (NANC), were also sought, and were submitted on 31 March 1999. The Common Carrier Bureau also requested comment on Mitretek Systems assuming the responsibilities of the NANPA, as it is the designated NANPA alternate. This response presents Mitretek's position regarding these comments and addresses Lockheed Martin's own failure to adhere to the standards of the law and the Commission's rules.

As a result of the proposed divestiture by Lockheed Martin of the NANPA responsibilities, the Common Carrier Bureau established a process where interested parties could submit questions and comments for the Bureau to review and in turn submit to Lockheed Martin, Mitretek, and the proposed majority owner of CIS, Warburg, Pincus

& Co. (Warburg).<sup>1</sup> The Bureau issued questions to Lockheed Martin, Warburg, and Mitretek. Mitretek responded and Lockheed Martin and Warburg submitted a joint response. The responses present the position of these entities on the ability of the new NANPA to adhere to the standard of neutrality in administering numbering resources, the price that would be charged, the resources that would be available and how each would transition to the NANPA responsibilities.

In these comments, Mitretek restates that the neutrality of the NANPA is critical and originates in public law. Mitretek urges the Commission to abide by its Third Report and Order<sup>2</sup> – declaring that the Lockheed Martin NANPA is in default on its obligation to perform the NANPA function and designate the alternate to administer numbering resources. Mitretek restates its ability to function as the NANPA and provides comment to make any transition successful.

#### **The Neutrality of the NANPA is Critical and Originates in Public Law**

The standard required of the NANPA is referred to as the neutrality standard and originates in public law. Section 251(e) of the Communications Act requires the NANPA to be impartial.<sup>3</sup> The Commission's rules require the NANPA to be an independent and impartial non-government entity and not aligned with any particular industry segment.<sup>4</sup> The Commission's rules also state that the NANPA may not be an affiliate of any telecommunications service provider.<sup>5</sup> The Commission's rules are based on the NANC's Requirements Document,<sup>6</sup> which resulted from lengthy and significant deliberations of the industry. The Requirements Document emphasized the absolute necessity that the entity seeking the NANPA responsibilities adhere to the neutrality criteria, as demanded by the law. Of particular emphasis was the need to disclose any

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<sup>1</sup> Public Notice, FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, DA 99-117 (7 January 1999) Mitretek herein incorporates its comments filed to the initial Public Notice, dated and filed 22 January 1999, its response to the questions submitted by the Common Carrier Bureau, dated and filed 12 February 1999, its submission to the Chief of the Common Carrier Bureau, dated 8 December 1998, its letter to Alan C. Hasselwander, dated 26 March 1999.

<sup>2</sup> Third Report and Order, Administration of the North American Numbering Plan, 12 FCC Rcd 230140 (released 9 October 1997) (Third Report and Order) at para 67.

<sup>3</sup> Section 251(e) of the Telecommunications Act of 1934.

<sup>4</sup> 47 CFR 52.12(a)(1).

<sup>5</sup> 47 CFR 52.12(a)(1)(i).

<sup>6</sup> See North American Numbering Plan Administration Requirements Document, 20 February 1997 at section 1.2.

affiliation or association with any telecommunications service provider.<sup>7</sup> The Requirements Document mandated a certification that the applicant and any subcontractor shall comply with all the provisions of the document. Clearly, the NANC's Requirements Document and the Commission's rules envisioned that continued compliance with the neutrality standard was an ongoing obligation of the NANPA and a basis for determining satisfactory, and unsatisfactory, performance of the NANPA.

The policy behind the Commission's neutrality standard goes directly to its obligation to ensure, particularly in the competitive environment envisioned by the 1996 Act, that entities who depend upon an important public resource, numbers, have confidence that the NANPA will be fair and impartial. The NANPA possesses market sensitive information such as where numbers are in short supply, where and what carriers are seeking numbers, and what market segments are being pursued. In this competitive environment, each firm's number utilization and request data, essential to the NANPA's effective and efficient administration of the numbering resource, are highly-guarded indicators of their competitive strategy, plans, and well-being, and are strategically-useful data to competitors, both those that do and do not directly use numbering resources. These competitive firms do not provide such numbering resource data to others with whom they currently compete or will compete for customers. The absence of such data reported results in ineffective and inefficient administration of a limited and critical resource to this competitive environment. This is critical especially since several geographic areas are beset by severe constraints in number availability.<sup>8</sup>

#### **The Commission's Third Report and Order Specifies Action in the Event of the Appointed NANPA Failing to Meet its Neutrality Obligations and Performance**

As stated to the Common Carrier Bureau, Lockheed Martin has elected to abandon its appointment as the NANPA, and to attempt to transfer to another corporate entity the NANPA functions.<sup>9</sup> Such a transfer was not envisioned as the procedure for addressing the designated NANPA's default on its obligations or its unsatisfactory performance. In fact, in its 1997 Third Report and Order, the Commission specified the

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<sup>7</sup> See North American Numbering Plan Administration Requirements Document, 20 February 1997 at section 1.2.

<sup>8</sup> Memorandum Opinion and Order, FCC 98-224, CC Docket 96-98 (28 September 1998).

<sup>9</sup> See Petition submitted 21 December 1998.

action to be taken to address the default or unsatisfactory performance of the selected NANPA. Specifically, the Commission said

*If Lockheed defaults on its obligations as NANPA, or if the NANC determines that Lockheed does not perform those functions in a satisfactory fashion, Mitretek will have the opportunity to assume NANPA responsibilities for the remainder of the five-year term, if it still wishes to do so, without its undergoing another evaluation process.*

The Commission, given the current circumstances, has two options: abide by its Third Report and Order and name Mitretek, the designated alternate, as the NANPA successor; or, vacate its Third Report and Order and pursue other alternative procedures. Mitretek urges the Commission to abide by its Third Report and Order. The comments<sup>10</sup> filed by Mitretek on 8 December 1998 support this position with additional facts and circumstances.

**The Sale of the NANPA as Proposed by Lockheed Martin and Warburg Pincus Results in a NANPA that Does Not Conform to the Commission's Rules**

If the Commission chooses to vacate its Third Report and Order and consider the sale of the NANPA to Warburg Pincus, then the Commission must decide whether it will require conformance to the Commission's NANPA Rules or will rule that any neutrality violations clearly evident in the proposed sale are *de minimis*<sup>11</sup> or do not subject the new NANPA to any undue influence.<sup>12</sup>

The proposed sale of the NANPA to Warburg Pincus will clearly violate current Commission rules relating to NANPA neutrality. In its 31 March 1999 comments to the Commission, the NANC stated

*NANC consensus was that the CISAC does not meet all the criteria for neutrality as cited in the Requirements Document and FCC rules.*

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<sup>10</sup> Letter of H. Gilbert Miller, Vice President, Mitretek Systems to Mr. Lawrence Strickling, dated 8 December 1998.

<sup>11</sup> The Commission in its Third Report and Order found "that Lockheed Martin IMS is an affiliate of a 'telecommunications service provider,' and is in technical violation of a portion of the NANC's proposed neutrality criteria." However, the Commission went on to state that "the violation of section 52.12(a)(1) is *de minimis*."

<sup>12</sup> The NANC has used the undue influence as a measure of neutrality.

The joint response of Lockheed Martin and Warburg makes clear that its proposed new NANPA, CISAC, would violate the neutrality standard of the law. Warburg, the owner of up to 95 percent of the CISAC, with Lockheed Martin owning the remaining 5 percent, has a clear and defined interest with several segments of the telecommunications industry that violates the neutrality standard of the law. Examples of clear violations include Warburg owns more than 10 percent interest in three telecommunications companies (i.e., Covad,<sup>13</sup> Espirit Telecom Group, Primus Telecommunications Group). Although not rising to the level of the affiliate threshold, Warburg holds substantial interests in companies that use and depend on numbering resources as evidenced by the following companies that are listed among the 10 largest holdings in various Warburg funds<sup>14</sup> – MCI WorldCom, MediaOne, BellSouth, AT&T, Bell Atlantic, Lucent, Global TeleSystems Group.

The NANC concluded that the new NANPA as proposed by Lockheed Martin and Warburg would not be subject to undue influence under the following conditions and prescriptions to include but not limited to: quarterly neutrality audits of the NANPA, specification of memberships in Boards of companies owned by Warburg Pincus, CISAC code of conduct, information barriers among Warburg Pincus affiliates, and a 20-day notice of when one of the Warburg Pincus affiliates commence using numbers. The last item may be assumed to conclude that the dynamics of the commercial marketplace will likely result in a situation in which further action to secure neutrality will occur. The required revised rules are an indication to the Commission of how far its rules have been violated.

#### **Mitretek Has Demonstrated Its Capability to Assume the Responsibilities of the North American Numbering Plan Administrator**

In its Third Report and Order issued in October 1997, the Commission designated Mitretek as the alternate NANPA, stating that, Mitretek will have the opportunity to assume NANPA responsibilities without its undergoing another evaluation process.

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<sup>13</sup> [www.covad.com](http://www.covad.com)

<sup>14</sup> Warburg Pincus Capital Appreciation Fund, Warburg Pincus Growth & Income Fund, Warburg's Balanced U.S. Stock Fund, Warburg Pincus Global Telecommunications Fund, see Investor's Business Daily 24 February 1999 at B1, Warburg Pincus Funds Fact Sheet-Growth & Income, 31 December 1998, Warburg Pincus Funds Fact Sheet-U.S. Stock Fund, 31 December 1998, Warburg Pincus Funds Fact Sheet-Global Telecommunications, 31 December 1998.

In its response dated 12 February 1999, Mitretek provided comprehensive answers to the questions submitted by the Common Carrier Bureau and conveyed its commitment to assume the responsibilities of the NANPA. In that submission, Mitretek provided a price for the remainder of the NANPA term that is current to the NANPA level of activities. This price is approximately two percent higher than the current NANPA price over the remainder of the term. Mitretek will also submit prices that relate to the additional functions included in its 1997 Proposal. With regard to transition, Mitretek is committed to a transition plan that will be executed in three to five months.

Significantly, Mitretek reiterated that it currently and fully complies with the Commission's neutrality standards and will continue to do so. Mitretek is a private-sector, non-profit corporation, where there are no private ownership rights, that works exclusively in the public interest. Mitretek is able to serve as an impartial entity, administering telecommunications numbering and making such numbers available on an equitable basis. It is not, and will not become, aligned with any particular telecommunications industry segment.

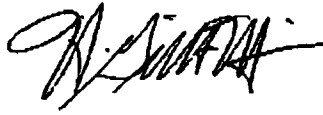
Mitretek again states its commitment to the Commission and the industry to a successful NANPA operation, including transition that may be required.

#### **Summary**

The Commission's neutrality rules are intended to instill confidence that the manner by which numbering resources are allocated and administered are above reproach. The emerging competitive environment, the principle behind the Telecommunications Act of 1996, requires no less. Competitors must be assured that the public responsibility of who, when and how parties obtain numbers will be entrusted to an entity that has neither the appearance nor interest in the information and activities of any entity other than the North American Numbering Plan Administrator.

The default by Lockheed Martin of the very neutrality standards it agreed to adhere to, combined with the manner Warburg proposes these rules now be construed, undermines public confidence that the Commission's rules and policies can be enforced and not subject to self-interest amendment. Mitretek Systems should be designated the North American Numbering Plan Administrator.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Gilbert Miller', with a stylized, sweeping flourish at the end.

H. Gilbert Miller

Vice President

Center for Telecommunications and Advanced  
Technology

Mitretek Systems

16 April 1999